

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MEDPOINTE HEALTHCARE INC.,	)	
	)	
	)	
Plaintiff,	)	C.A. No. 06-164 (SLR)
	)	
v.	)	
	)	
APOTEX INC. and APOTEX CORP.,	)	
	)	
Defendants.	)	

**APOTEX'S MOTION TO SUPPLEMENT APOTEX'S  
RESPONSE BRIEF ON CLAIM CONSTRUCTION**

On January 11, 2007, the parties filed their respective response briefs on claim construction issues. In Apotex's brief, it requested leave to supplement the record with official Hague Convention testimony that was unavailable at the time of filing its brief. Apotex now moves the Court for leave to supplement the record with official testimony that has recently been made available to the parties. This testimony establishes compositions within the narrowest claimed ranges of azelastine containing medicaments are not "safe, efficacious and tolerable", and that "safe, efficacious and tolerable" are not limitations of the '194 patent claims.

In addition, Apotex respectfully moves the Court to allow it to supplement the record in response to MedPointe's assertion, raised for the first time in MedPointe's response brief, that the spraying application of claim 9 must be limited to nose spray applications because eye spray applications are entirely unknown in history. Apotex requests the Court allow it to introduce evidence that eye sprays are not only known in the art, but were known in the art long before November 1987, the priority date of the '194 patent.

Official Hague Convention testimony, evidence demonstrating the well-established practice of applying medicaments directly to the eye via spraying and support for Apotex's

motion can be found in Apotex's Memorandum In Support Of Its Motion to Supplement Apotex's Response Brief On Claim Construction. As explained more fully therein, MedPointe has refused to consent to the filing of Apotex's motion. Apotex has informed MedPointe that it would not object to MedPointe's filing a response to Apotex's motion, if it deems such a response necessary.

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Dated: February 26, 2008  
851047 / 30136

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**CERTIFICATE OF SERVICE**

I, Kenneth L. Dorsney, hereby certify that on February 26, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I hereby certify that on February 26, 2008, the document was Electronically Mailed to the following person(s)

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Defendants.	)	

**ORDER**

Having considered Defendant's Motion To Supplement;

IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2008 that the  
Motion is GRANTED.

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United States District Judge

851047/30136